THE NEW-YORK
CITY-HALL RECORDER.

VOL. II. *For August*, 1817. NO. 8.

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday*, the 4th day of *August*, in the year of our Lord one thousand eight hundred and seventeen—

PRESENT,

The Honourable
JACOB RADCLIFF, *Mayor.*
REUBEN MUNSON, *Alderman.*
JAMES HOPSON, *Special Justice.*
HUGH MAXWELL, *District Attorney.*
MACOMB, *Clerk.*

GRAND JURORS.

JOHN BLOODGOOD, *Foreman.*

WILLIAM G. JONES,	EDMUND KIRBY,
JOHN HAGGERTY,	JOHN GRAHAM,
HENRY ECKFORD,	CORNS. H. DUFFIE,
ROBERT BARNES,	WM. COULTHARD,
CALEB BRUSH,	HENRY KERMIT,
ROBERT P. BELL,	JOHN BULKLEY,
CHARLES TOWN,	ROBERT BAILEY,

MORDECAI MYERS.

(LIBEL—RIDICULE.)

FRANCIS MEZZARA'S CASE.

MAXWELL, WILKINS, GARDENIER and PRICE, *Counsel for the prosecution.*
D. B. OGDEN, R. EMMETT and J. C. P. SAMPSON, *Counsel for the defendant.*

Where a painter of *professed* eminence requested a citizen to have his portrait drawn, by reason of some peculiarity discovered by the painter, as he alleged, in the physiognomy of such citizen, who consents, and the painter draws an imperfect likeness and exhibits it in a public place, at which the citizen is displeased, alleging that it is not his likeness, but, nevertheless, offers to pay such painter the full charge of such painting, which he first refuses to receive, considering his professional skill decried, but, afterwards, demands the money, which the other refuses to pay, and an action is brought by the painter to recover the price of the painting, who fails; and afterward an execution in favour of such citizen, for the costs of defending such suit, is issued, by virtue of which the same picture is levied on by the sheriff, and receipted by him, and left with the painter until the day of sale, and, in the mean time, the artist paints on the head of such picture a pair of Ass's ears, on the day of sale causes a ludicrous advertisement of the sale of such picture to be inserted in a public newspaper, and endeavours to incite the auctioneer to put such picture in a conspicuous place in the auction room to be seen by the people, it was held that such conduct was sufficient to fix on such painter the offence of *publishing* a libel.

It is no justification for such painter in publishing such libel, that such citizen, after he refused to receive, but had offered to pay for the picture, gave a written certificate to the painter authorizing him to dispose of it as he pleased.

In such case, to show the want of malice, the painter will be permitted to show that, *at the point of time* in which he was painting the Ass's ears on the picture, he represented to a bystander, that it was his intention to transform such picture into a Midas.*

A jury *de medietate linguæ*, should consist of such aliens as understand our language.

It has been justly remarked by Lord Kaimes, in his Elements of Criticism, that ridicule is the test of truth. This profound judge of human nature has well distinguished a laughable from a ridiculous object; and teaches us that ridicule arises from a mixed emotion of mirth and contempt. And he further observes, that an object that is neither risible nor *improper* lies not open, in any quarter, to an attack from ridicule; that an irregular use made of a talent for wit or ridicule, cannot long impose on mankind;

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* Midas, in the ancient mythology, was a king of Phrygia, who, becoming a favourite of Bacchus, at the special request of the king, was endowed by that god with the power of turning all things which he touched into gold. He soon found the gift pernicious and worse than useless; and at his intercession the power was abridged by Bacchus. Afterwards Midas, in a contest between Pan and Apollo for excellence of music, adjudged in favour of Pan; when Apollo, as a punishment to Midas, caused Ass's ears to grow out of his head.

——— "partem damnatur in unam
Induiturque aures lente gradientis Aselli."
OV. MET. LIB. XI.

Midas endeavoured to conceal his deformity by wearing red turbans; but his servant, who cut his hair, discovered his ears, and, not daring to disclose the secret, dug a hole in the earth, and whispered therein in a low voice, "King Midas has the ears of an Ass." Trembling reeds sprung up in the place, which, on coming to maturity, continually emitted, in audible sounds, the words of the mighty secret which had long been buried.

it cannot stand the test of correct and delicate taste; and truth will at last prevail even with the vulgar. (1 El. Crit. P. 306.)

Admitting that there are some laughable incidents peculiar to this case, we deny that ridicule is attributable to the conduct of Mr. Palmer. We consider that the case is calculated for unfolding curious and important principles, and that personal feelings are concerned. As such it ought to be considered, and, with that view, we recur to the authority of Lord Kaimes, believing the principles, above transcribed from his work, strictly applicable to the cause before us.

The defendant was indicted for a libel published against Aaron H. Palmer. The indictment, which contained several counts, stated that Palmer, at and before the publication of the libel, was a counsellor and attorney at law in this city, and a master in chancery and public notary, and that the defendant, contriving him the said Aaron H. Palmer to bring into public hatred, ridicule and contempt, on the 30th day of July then last past, at the city of New-York, falsely and maliciously did make, utter, and publish a certain picture, portrait, or resemblance of the said Aaron H. Palmer, with the ears of an Ass at the head of such picture or resemblance. And, also, for that the said defendant, further intending him the said Aaron H. Palmer into public hatred, ridicule, and contempt to bring, did cause, and procure to be inserted in a certain public paper in the City of New-York, called the "Republican Chronicle," the following libel of and concerning him the said Aaron H. Palmer:

"*Curious Sheriff's Sale.* We have been requested to mention, that there will be sold, this forenoon, at public vendue, at No. 133 Water-street, a PICTURE *intended* for the likeness of a gentleman in this city, who ordered it painted. But as the gentleman disclaimed it, it remained the property of the painter, and is now seized by execution. In order to enhance its value, the painter, who is an eminent artist from Rome, has decorated it with a pair of *long ears*, such as are usually worn by a certain stupid animal. The goods can be inspected previous to the sale."

The defendant, by his counsel, had moved for a special venire to summon a jury *de medietate linguæ*, under the statute, which motion was granted. On the return of the venire, a number of the jury were called who did not understand the English language. The court directed these to stand aside, and that the sheriff should summon a *tales* of such as spoke the language.

After the cause was opened by Maxwell, he introduced Jonathan L. Brewster, a deputy sheriff, as a witness, who, on being sworn, stated, that in the month of July last, an execution in favour of Aaron H. Palmer against Francis Mezzara for $24, issuing from the Mayor's court, was put into the hands of the witness; that he went to the shop of Mezzara, who represented that he had no other property to satisfy the execution except the picture, which he pointed out, and which the witness recognised as the likeness of Mr. Palmer. The witness levied on the picture, and John Cheneau, a friend of Mezzara, became security for the delivery of the picture on the day of sale, and it was retained by him. The sale took place on the 30th of July last; and, on that day the witness, on calling for the picture, found it disfigured by the appendage of Ass's ears to the head. The witness took it in a carriage, and carried it to the auction room of Nathaniel G. Ingraham, where it was exposed for sale, in the presence of an unusual collection of people. Mr. Palmer having understood, a few minutes previous to the sale, that the picture was so disfigured, instructed the witness to have it bid as high as $30, for the purpose of having it destroyed, and a young man, a clerk in the auction room, bid to that sum for Palmer; but the picture was struck off to one of Mezzara's friends for $40, and the amount of the execution was paid to the sheriff by Mezzara in person.

Samuel Woodworth, a witness on behalf of the prosecution, on being sworn, stated, that he wrotethe article, above set forth, and inserted it in the "Republican Chronicle," from the instructions which he received from two foreigners, who were strangers to him; one of whom he believed to be the defendant. They had first spoken to Mr. Baldwin, the proprietor of the paper, on the subject, who introduced them to the witness, to whom they told the story, and he reduced it to his own language.

Nathaniel G. Ingraham, on being sworn, testified that he was the auctioneer, and sold the picture in presence of a large collection

of people. Mezzara attended, and appeared to be much elated. He advised the witness to take the picture from the counter and exhibit it in a more conspicuous place, that it might be inspected by the people. The crowd became so great that the witness thought proper to remove the picture into the back room.

Aaron H. Palmer testified, that the defendant, who professed himself to be an eminent artist from Rome, had been in this city about six months, when he accidentally became acquainted with Mezzara at the house of Baron Quenette, a French gentleman residing in this city, who represented the said Mezzara to the witness as a man of genius and an eminent connoisseur in the fine arts; in consequence of which the witness treated the defendant with considerable attention, and invited him to his house to dine. While at dinner, the defendant proposed to draw a portrait of the witness and was very solicitous that he should sit for that purpose; alleging that there was a very striking peculiarity in the forehead, and that the head of the witness was a head of study—expressing it in French as "*une tete d'etude.*" Some time afterwards, and after repeated importunity on the part of the defendant, the witness at length reluctantly consented to sit, and the portrait was drawn by the defendant. He put it into a frame and carried it to the Academy of Arts, without the knowledge or consent of the witness. Previous to this, however, he had seen the picture, in an unfinished state, and expressed no particular disapprobation of the performance to the defendant. After it had been exhibited in the Academy of Arts, the witness, on inspection, considered it as unworthy of an artist of eminence; and his friends pronounced it to be a caricature. The witness was much displeased and disappointed; and mentioned his opinion, and that of his friends, to the defendant, whom he met in Broadway, but, nevertheless, offered and tendered him the full charge for the painting, which was $65; and, at the request of the defendant, gave him a certificate authorizing him to keep the picture. The defendant, considering his professional skill decried, and his feelings wounded, refused to receive the money, and was very vindictive in his remarks, alleging that the witness had wounded his self-love, and that he would have satisfaction. However, in the afternoon, the defendant sent a young man for the money, which the witness then refused to pay. Whereupon the defendant commenced an action in the Mayor's court, to recover the price of the painting. He failed; and the same evening in which the verdict was rendered against him, he abruptly obtruded himself upon the witness in Broadway, who was conversing with Barent Gardenier and Isaac M. Ely. The witness then told the defendant that if he considered himself aggrieved by the verdict of the jury, he was disposed to do him justice, and that he should have no cause to complain of his want of generosity. The defendant invited them to his room to inspect the picture; and after some conversation, wherein he was very abusive, (finding that those gentlemen did not concur with him in opinion respecting the likeness,) as they were about leaving the room, he took chalk and sketched Ass's ears on the head of the picture, threatening to paint them thereon and expose it in Broadway.

John W. Jarvis, a witness on behalf of the prosecution, on being sworn, testified, that he is a portrait painter by profession; that he had seen the picture said to be the likeness of Mr. Palmer, before it was disfigured, in Mezzara's room; that it was an imperfect likeness, and rather a botch than the performance of an accomplished artist. The next time the witness saw the picture, it was in possession of the defendant, who was exposing it, seemingly in a triumphant manner, in Pine-street, with the appendage of Ass's ears. The witness further stated that it was not a representation of Midas.

Mr. Emmett, in an address to the jury of considerable length, opened the case on behalf of the defendant.

John Cheneau, a Frenchman, who did not understand the English language, was here sworn as a witness on behalf of the defendant, and Edmund C. Genet was sworn as an interpreter. The most material part of the testimony of this witness was, that the defendant, after the failure of his suit, as aforesaid, said that he had a lawsuit against the man for whom he made the picture, who had a judgment against him. The picture had cost him much time and money, he had paid $15 for a frame, and since it had become his own property, he must do the best he could with it. The witness did not hear from the defendant that he was about trans-

forming the picture into a Midas, nor did he, the witness, know any thing of the story of that king.

It appeared, from the testimony of Maria Brunet, a French woman, that when Brewster came to take away the picture, on the day of sale, Mezzara asked him if he could be injured by reason of the transformation above mentioned, and the sheriff answered in the negative.

Maria M'Dowell, a French woman, on being sworn, was inquired of by Emmett whether the defendant, at the time he was painting the Ass's ears, did not say he was painting a Midas.

The testimony was objected to by Mr. Price; when Ogden contended, that the testimony was admissible as a circumstance to show a want of malice. The declaration being made at the precise time of the painting, was a part of the *res gesta*.

The court, on that ground, decided the question in favour of the defendant, and the witness answered it in the affirmative.

Thomas Blanchet, on being sworn as a witness for the defendant, stated, that he called on Palmer with the bill for the painting: that Palmer told him he would see Mezzara on the subject; and the witness replied, that it would be of no use, unless the money was paid.

Barent Gardenier, a witness on behalf of the prosecution, on being sworn, stated, that towards the evening of the day of the trial in the Mayor's court, concerning the picture, Isaac M. Ely and himself were conversing with Mr. Palmer, when the defendant came up and joined them. He appeared to be much agitated, and invited the three to his room in Reed-street, where he exhibited to them the picture for their opinion or approbation. The witness did not express his approbation of the performance very strongly; and the language of the defendant towards Mr. Palmer was intemperate. Before his visitants had left the shop, the defendant said to Palmer, "Since this is not your picture you will not be offended at this." At the same time he took a piece of chalk, and sketched a pair of Ass's ears on the head of the picture; evidently, with a design of wounding Palmer's feelings. Palmer however kept his temper, and seemed to smile, but the witness thinks it gave him pain.

Here the evidence on both sides closed. Before the counsel for the defendant had commenced addressing the jury, Price read the law on which the counsel for the prosecution intended to rely, from Starkie's Law of Slander, p. 549, and adverted to the authorities there cited.

The cause was summed up by Mr. Sampson, with much energy and humour, and he was followed by Mr. Ogden on the same side. It was principally contended on behalf of the defendant, 1. That this was either a likeness of Mr. Palmer, or it was not a likeness. If a likeness, it was his duty to have paid the painter; if not, the appendage of Ass's ears, on a picture not a likeness, was not a libel on him more than on any other individual.

2. The defendant is not guilty of a publication of the picture. It was taken under an execution in favour of Mr. Palmer, and exposed by him for sale. The sheriff, who in the transaction was the agent of Mr. Palmer, ought not to have taken the picture in its disfigured state on the day of sale; but should have resorted to his action on the bond given for its delivery. It was, in truth, not the same picture which had been originally seized, and the bond was, therefore, forfeited.

3. Palmer had relinquished all right to the picture, had declared it was not his likeness, and had given the other express authority to dispose of it as he thought proper.

4. After this, the defendant having expended much time and money in the performance, and been subjected to an additional loss by the failure of his action, and having the picture thrown on his hands; had a right to make the best use of it he could. On this point, in opening the case and summing up, it was strenuously urged by the junior counsel for the defendant, to the jury, that he actually intended to metamorphose the picture into a representation of Midas; and was not actuated by any malicious or mischievous intention towards Mr. Palmer. Even if he had such intention, he was a stranger in our country, and unacquainted with the severity of our laws on the subject of libel.

The cause was summed up by Messrs. Wilkins and Price on behalf of the prosecution, who contended, 1. That although this was not a perfect likeness of Mr. Palmer, yet it so far resembled him that all his acquaintance knew that he was the person whom the picture designed to represent. The appendage which was superadded, was

manifestly intended to hold him up to public ridicule.

2. After the defendant had failed in his action, he determined to revenge himself on Mr. Palmer by affixing Ass's ears to the picture. In presence of Messrs. Gardenier and Ely, he manifested this determination, by chalking or sketching such ears, which he afterwards finished with oil. In the auction room, he endeavoured to have the picture exhibited to the view of the people, who had been drawn there by means of an advertisement, of which he was the author, published in a public newspaper. He exhibited the picture in a triumphant manner in the streets, after having bid it off at auction and paid the money. The counsel contended, that these acts sufficiently fastened on the defendant the charge of publication.

Wilkins, on this branch of the subject, while expatiating on the atrocity of such conduct, emphatically inquired, Where is this conduct to stop? What is to deter the defendant from exhibiting this picture in our streets, again and again, but the wholesome restraint of a verdict.

And yet, gentlemen of the jury, said the counsel, what is to be done with the man? Should you acquit him, he still continues to hold up this respectable citizen, this counsellor and master in chancery, to public contempt and ridicule. Should you find him guilty, I am not certain but that, to revenge himself, he will draw your pictures with his Ass's ears! And, said the counsel, casting his eyes towards the court with that peculiar gravity for which he is so celebrated in an appeal of this nature, I fear their honours on the bench will share the same fate! But still, neither their honours nor you, gentlemen, are to be deterred from the plain path of duty by such considerations.

3. Palmer, by relinquishing all right to the picture, and leaving the defendant at liberty to dispose of it as he thought proper, did not thereby license him to do an unlawful act; an act which could hardly have entered into the contemplation of any man.

The manner in which this written certificate was obtained, shows a subtle contrivance and artifice on the part of the defendant to avail himself of the license in justification of a libel, the publication of which he then meditated.

His honour the Mayor, in his charge to the jury, remarked, that although the libel charged in the indictment was in its nature private, and, therefore, not important in a public point of view, yet the case, by reason of its peculiar nature, required their serious attention. Any publication, picture, or sign, made with a mischievous or malicious design, which holds up any person to public contempt or ridicule, is denominated a libel. His honour here adverted to the prominent facts in the case; and, on the subject of the recovery in the Mayor's court in favour of Palmer against the defendant, charged the jury that they ought to consider that the reason of that recovery was, that the jury did not consider the picture a proper likeness of Mr. Palmer, for which he was bound to pay. On this subject, his honour thought the verdict of that jury furnished a guide to this. The whole testimony touching the claim of the plaintiff in that suit, and the defence interposed, was there exhibited.

It appeared, that after the verdict was rendered in the Mayor's court, the defendant, in presence of Mr. Gardenier and others, drew or sketched this appendage, to the picture in chalk, and used intemperate language to Palmer. This is urged as a circumstance manifesting the mischievous intention of the defendant. On the day of sale, he caused an advertisement to be inserted in a public newspaper giving an account of the sale of the picture in its disfigured state. This advertisement furnishes, perhaps, the best evidence of his intention in the transformation of this picture. Afterwards we find, by the testimony of Mr. Ingraham, that the defendant attended at the time of sale, and wanted the picture exposed to the view of the people.

From all the facts and circumstances in the case, it will be the duty of the jury to determine whether the defendant, in altering this picture, and thus exposing it, has not been actuated by motives of resentment and revenge. Should this be the opinion of the jury, the defendant ought to be found guilty. A certificate has been produced in evidence on the part of the defendant, bearing date on the 20th of May last, by which Palmer, at the request of the defendant, gave him liberty to dispose of this picture as he thought proper. This certificate could not, in the opinion of the court, amount to a license to publish a libel—this was not the object or intention with which it was given.

His honour, in the conclusion of his charge, observed to the jury, that the defendant, having originally undertaken to draw a correct likeness of Mr. Palmer, was bound to perform according to the undertaking. In the view of the court, the verdict in the Mayor's court must have been rendered on the ground that this was not such a likeness as Palmer had a right to expect.

The story of Midas was so distant, and had so little application to the case, that the court did not think it proper to detain the jury on the subject.

The jury retired at about eleven o'clock in the evening, continued together during the night, and the next morning at about nine o'clock returned with a verdict against the defendant.

It being suggested to the court, during the trial, that Palmer had commenced a civil action against the defendant for the libel, the court suspended its sentence until the result of that suit could be known.

From the facts in this case, an ample opportunity is presented for applying the principles which we before extracted from a celebrated authority. To see a pair of Ass's ears attached to the picture of any individual, however respectable, however worthy and venerable he may be for learning or piety. it must be confessed, is a laughable object. But unless such individual has been guilty of some gross folly or impropriety, this appendage, attached to his representation, is incompatible with our ideas of moral fitness; the libel does not apply to the character of the man; and though we may laugh, we cannot ridicule. In this particular case, had Palmer, after an imperfect likness, or rather caricature, of himself, had been drawn by this professed artist from Rome, been so much attached to the artist, the country and performance, as to have put the picture in the Academy of Arts for exhibition, and afterwards in his own parlour; and, notwithstanding all his friends might tell him to the contrary, he should extol it to the clouds, and say, "My friends, this portrait was drawn by the celebrated Francis Mezzara, a *Roman artist*. Rome is the seat of the fine arts, the cradle of painting: no man in this country can equal this portrait—none can vie with Mezzara. It is impossible *he* should mistake. No *Roman aritst* can be mistaken."

Should he then make a handsome present to the artist, over and above the $65, and continue to invite him to dinner, and, in high glee over his wine, commend the excellence of the picture, while his friends sat by, laughing in their sleeves at his folly; then, and in such case, should Mr. Jarvis, or some of our homespun, native artists, get hold of this portrait, and, in addition to its other absurdities, decorate it with the ears of an Ass, and exhibit it in Broadway, the ridicule would be just. And if the painter could show the truth of the matter in evidence, as before described, and that he published and exhibited the picture, "with good motives and for justifiable ends," (and there is no doubt the motives in such case would be considered purely national and patriotic —the best of all possible motives,) would he not be justifiable under our statute?

Again, had Mezzara, in truth, drawn an excellent portrait of Mr. Palmer at his express request, such a portrait as he and his friends had a right to expect, but without previously making an agreement for the price; and afterwards, when the artist had exhibited his bill for $65, which we will suppose a reasonable compensation. Palmer had disputed the bill, told him it was not worth more than $10, and he would give him no more; then, and in such case, had the artist, in disdain for such meanness, refused to receive the paltry sum offered, and smarting under the injustice of his employer, decorated the head of the portrait with the ears of "a certain grunting animal," and exposed it in Broadway, the appendage would have been consonant with our notions of moral fitness and propriety. In such case, every man acquainted with the facts, would have applauded the performance, and contemned the improper conduct of Palmer. The laugh raised by such a performance, under such circumstances, would be, in truth, a laugh of ridicule.

Mr. Palmer having discontinued his private suit against the defendant, for the same libel, the court, on the last day of September term, in consideration that he was not a man of property, and was a stranger in our country, (which were mentioned as reasons for not inflicting a more rigorous punishment,) proceeded to sentence him to pay a fine of $100.

(GRAND LARCENY—FOREIGN JURISDICTION.)

SAMUEL BRITTON'S CASE.

MAXWELL, *Counsel for the prosecution.*
GARDENIER, *Counsel for the prisoner.*

Where a felony is committed within the city of New-York, and the prisoner is pursued into the state of New-Jersey, and apprehended without legal authority, and brought back, and is then arrested by virtue of a warrant issuing from the police, it was held, on the traverse of an indictment against him for the offence, that the alleged violation of the sovereignty of New-Jersey would not be regarded by the court, who would not look beyond the arrest by the police.

It seems, that, in such case, any alleged violation of territorial rights, is a matter resting between the executive of the respective states, with which the court will not interfere.

Innkeepers should be cautious of putting a stranger to lodge in the same room with other guests.

The prisoner, a young man of about twenty-five years of age, well drest, and of good external appearance, was indicted for grand larceny, in stealing, on the 17th day of July last, a sum of money, amounting to $120; $100 of which was in bank bills, and the residue in specie, the property of Jeremiah Neave.

When the prisoner was first arraigned, Gardenier, on reading an affidavit of the prisoner, which stated that he was arrested at Westfield, in the state of New-Jersey, by Solomon D. Gibson and others, and brought to this city, where a warrant issuing from the police was served on him, by virtue of which he was confined in bridewell, moved that the prisoner be discharged. The counsel contended, that the arrest of the prisoner in New-Jersey was a manifest violation of the sovereignty of that state. He was taken illegally; and, therefore, his subsequent arrest and detention in bridewell were illegal. In support of his argument, the counsel cited the 4th art. of the U. S Constitution, sect. 2. (1st vol. R. L. p. 22.) directing the mode in which fugitives from justice, flying from one state into another, should be apprehended.

Maxwell, contra, was stopped by the court, who decided that the prisoner having been regularly arrested in the city of New-York, by virtue of a warrant issuing from the police, for an alleged felony committed in the city, must be held to answer for that charge. The court could not look beyond this arrest, nor take notice of an alleged violation of territorial rights; which, if it existed, was a matter, resting or depending, between the executive of the respective states.

At a subsequent day in term, the prisoner was brought up for trial. It appeared in evidence, that on the evening of the 17th of July, Neave, a gentleman of respectability, and a stranger, put up at the hotel of Solomon D. Gibson, in Wall-street, and retired to rest early in the evening. About nine o'clock, the same evening, the prisoner came to the hotel, and asked for lodgings. After taking some little refreshment, he was conducted to the same room in which Neave slept. According to the testimony of Neave, the prisoner counterfeited sleep; and when Neave rose in the morning, at about four, he found the prisoner's bed empty, and his own pocket-book, which was left the preceding evening in the pocket of his pantaloons, rifled of the contents.* He sent for the landlord, and imparted to him the loss.

Gibson, in company with others, went in immediate pursuit of the prisoner, and on the 19th of July, found him in the town of Westfield, in New-Jersey, about twenty miles from Jersey city, or Powles-Hook.

In the presence of Judge Downer and others, who were present to assist in the arrest, Gibson inquired of the prisoner whether he did not put up at Gibson's Hotel in Wall-street, on the night of the 17th, which the prisoner positively denied; and further said, that, on that night, he put up about thirty miles from New-York, up the North River, on his way from Poughkeepsie to that city. The prisoner was searched, and the principle part of the money stolen from Neave, taken from his possession. It was enclosed in an envelope by David Ball, who assisted in the arrest; and the prisoner was brought to this city.

On the trial Neave identified several of the bills which were proved to have been taken from the prisoner; and Solomon D. Gibson and his brother Edmund B. Gibson, both of whom were present the evening

* It is a matter of prudence for travellers, when retiring to rest in a public house, to put their money, watch, or other valuable effects, under their pillow, or in their trunk.

when the prisoner came to the Hotel, clearly proved him to be the same person.

In his examination, taken in the police, the prisoner denied having staid at Gibson's the evening of the 17th; but gave an account of himself utterly inconsistent with that given as aforesaid at the time of his arrest.

His Counsel abandoned his defence, and he was immediately found guilty by the Jury.

He was sentenced to the State Prison five years.

(KIDNAPPING—ACT "CONCERNING SLAVES AND SERVANTS"—SLAVERY.)

JAMES H. THOMPSON and ROYAL A. BOWEN'S CASES.

P. A. JAY and MAXWELL, *Counsel for the prosecution against Thompson.*

GARDENIER and PHŒNIX, *Counsel for the prisoner.*

MAXWELL, *Counsel for the prosecution against Bowen.*

PRICE & PHŒNIX, *Counsel for the prisoner.*

The statute "to prevent kidnapping of free people of colour," passed February 25th, 1813. (2d vol. R. L. p. 209.) enacted, "that if any person shall, without due process of law, seize and forcibly confine, or inveigle, or kidnap, any negro, mulatto, mestee, or other person of colour, *not being a slave*, with intent to send him out of this state *against his will*, or shall conspire with any other person or persons, or aid, abet, assist, hire, command or procure, any other person to commit the said offence, &c. on being convicted, &c., shall be fined or imprisoned, or both, in the discretion of the court, &c.; such fine not to exceed one thousand dollars, and such imprisonment not to exceed fourteen years at hard labour in the state prison," &c,

In the "act concerning slaves and servants," passed March 31st, 1817, the above section is incorporated, and forms the 29th section; but the words "*not being a slave*" are omitted. In the 13th section of the statute of 1817, it is also enacted, "that if any person shall send to sea, or export, or attempt to export, from this state, or send or carry out of, or attempt to send or carry out of this state, &c. *any slave or servant*, every person so exporting, or attempting to export, &c. and every person aiding, &c. shall be deemed guilty of a public offence, and forfeit the sum of five hundred dollars with costs, &c. to be sued for and recovered in any court of record, &c. And further, that every slave or servant, so exported or attempted to be exported or sent to sea, *shall be free*."—On the traverse of an indictment under the 29th section, above mentioned, it was held, that forcibly confining, or inveigling, or kidnapping *any person of colour*, with intent to send him out of this state against his will, or the conspiring with any other person or persons, or aiding, abetting, assisting, hiring, commanding or procuring any other person to commit the said offence, whether such *person of colour was a slave or servant, or not*—is an offence against, and punishable by, the penalties of the 29th section.

It seems that the thirteenth section, above mentioned, is particularly applicable to cases where the owner or possessor of slaves or servants, residing in this state exports or attempts to export, such slave or servant out of this state, not confining himself to the exceptions in other parts of the statute.

Where in such cases it appears that a person, offered as a witness on behalf o the prosecution, is a slave, but alleged to be free by reason of an attempt to export him out of the state, he cannot give testimony until it is shown, by extrinsic evidence that he has become free by reason of such attempt: nor will the public prosecutor be permitted to introduce the former conviction of a person indicted for aiding, abetting, assisting, &c. the defendant on trial and another, to export such witness out of the state.

During the last term, James H. Thompson was indicted under the twenty-ninth section of the act entitled "an act relative to Slaves and Servants," passed March 31, 1817; for that he the said James H. Thompson, on the 26th day of June, 1817, at the city and within the county of New-York, without due process of law, did seize and forcibly confine, inveigle and kidnap, Ann Freeland, Catharine Daniels, Stephen Neros, David Treadwell, and two others, being children, all persons of colour, with intent them, the said Ann Freeland, &c. to send or carry out of this state against their will, contrary to the form of the statute.

The indictment also contained a count charging the prisoner with aiding, abetting and assisting Moses Nichols and Royal A. Bowen, to seize and forcibly confine, kidnap and inveigle the same persons of colour above named, with intent to send and carry them out of the state, against their will, against the peace, &c. and contrary to the form of the statute, &c.

During the present term Royal A. Bowen was indicted under the same section, for assaulting, inveigling and kidnapping the same persons without due process of law, with intent to carry and send them out of the state. And the indictment, in addition to the counts embracing the above charges, contained a count charging the defendant

with aiding, abetting, assisting, hiring, commanding and procuring one Moses Nichols and James H. Thompson, to seize and forcibly confine, &c. the same persons, being persons of colour, with intent to send and carry them out of this state, against their will, contrary to the form of the statute. On this count the public prosecutor principally relied.

The principle evidence introduced on the traverse of the first-mentioned indictment, was also introduced on the second; and the ground assumed by the respective counsel, in substance, were the same. We have blended the cases to avoid repetition; and we shall detail the principal testimony introduced on each trial.

On the trial of Thompson, Maxwell concisely opened the case to the jury, by stating that the defendant was indicted under the statute for attempting to export to a foreign port at the southward, certain persons of colour named in the indictment. He came to this city some time ago, from some place in Georgia, and put up at the house of Moses Nichols, in Love-Lane. He purchased a small schooner called the Creole, and had her stationed at a remote place, opposite the French Tan-yards, on the North river side of the city, and about a mile above the State Prison. A number of blacks were procured, at different places up the North river and in this city, by the defendant, in conjunction with Nichols and a man by the name of Royal A. Bowen. The defendant, however, was the principal in this nefarious transaction. These blacks were brought to the house of Nichols; and on the evening of the 26th June, under divers false pretences, made to these harmless unsuspecting people, six of them, including men, women and children, were taken on board. Several of them were confined in the hold, and the next morning the vessel started, having her head towards the Narrows, and was about proceeding to some port in the southern states. By the interference, however, of humane and benevolent men, the whole plan was frustrated. Through the vigilance of the manumission society, or some of the members, the scheme was discovered; and at the very juncture of time when this vessel was about departing from our waters, she was boarded by two persons belonging to that society. They found men, women and children in the situation before described. On that occasion, Thompson exhibited every symptom of conscious guilt. Assistance was procured from the police, he was apprehended, and the miserable victims, destined for exile and servitude in a foreign land, but ignorant of their fate, were rescued from his relentless grasp.

Should these facts, said the counsel, be established by the testimony, the prosecution will be entitled to a verdict; and the prisoner must be found guilty.

From the testimony of William Stillwell, a witness sworn on behalf of the prosecution, it appeared, that Thompson purchased the schooner Creole on the East river side of the city, had her repaired at Riker's Island, and stationed her on the North River side, above the State Prison. Thompson applied to the witness to go in the vessel to Darien in Georgia, and agreed to give him $60 a month; but the wages not being paid by Thompson, the agreement was not carried into effect. The witness had understood, from the person who spoke to him first on the subject of the voyage, that the object was to go to Darien for a load of wheat; and the defendant told him, that he was to take in the vessel two or three black people, to wait on the whites who were to go as passengers. The defendant did not inform the witness that the vessel was to go to Albany.

Samuel Willets, affirmed as a witness on behalf of the prosecution, testified, that on the morning of the 27th of June, at about nine o'clock, in company with his brother Joseph, he went up to the French Tan-yards, above the state prison, and saw a vessel in the stream, which he afterwards found to be the Creole, under way, with her head pointed down the river. The wind at this time was northerly, but light; and it was flood tide. The witness and his companion were rowed to the vessel by two other persons; and when they came alongside, they inquired for the captain. Thompson answered, that the captain was not on board. A further inquiry was then made by the witness—where the vessel was bound, and what was her cargo? The answer of Thompson was, that she was bound to Poughkeepsie and Albany, and that the cargo consisted of a *few provisions.*

The witness then stepped on board and inquired how many persons were on board besides those on the deck; Thompson and two others, apparently seamen, being the only persons then seen. Thompson replied that no other person was on board. To the same inquiry, made in a tone of

authority, the defendant made the same answer. The witness saw a person look through a crevice in the cabin door, who said that there were other persons on board; and the witness, opening the cabin door, found two black women, who then came on deck. Hearing a noise in the hold, the witness opened the hatches, which were barred on the outside in such manner that those in the hold could not have opened them, and found six persons: one woman, two children, and three men.

The defendant, on this occasion, was much agitated; and, during the conversation, said that he had been all the morning trying to proceed up the river; that he was bound for Poughkeepsie and Albany for a cargo of cheese to carry to Baltimore; that two of the black men were his servants, whom he was about to take to his family in that place, and that six of them had been put on board by Moses Nichols and Royal A. Bowen. The defendant stepped on board of the boat to come on shore, but was told by the witness that he should not, until Joseph Willets should return. Application was made to the police, and the defendant was arrested.

Since the witness came into court, the defendant further told him that he, the defendant, had employed Moses Nichols to purchase these blacks, and had furnished cash for that purpose; that if the manumission society would abandon the prosecution, he would give bonds to leave this state, and, if necessary, the United States, and would give all the blacks their freedom. He appeared to be very solicitous, if he should be convicted, that the manumission society would use their influence to have mercy extended towards him.

From the examination of the prisoner, taken in the police, it appeared that his place of residence is in Jones county, in the state of Georgia; that he is a planter, and intended to carry these blacks to that place, after going to Albany in the Creole, of which he is the owner.

It was proved that these blacks were taken, in a chair, from the house of Nichols to the schooner, in the night, by Thompson; and that one of the black women, after she was taken on board and put in the hold, wished to go on shore; but Thompson told her if she came on deck, the United States would seize his vessel and she would be put in bridewell.

James H. Baldwin, of Poughkeepsie, on being sworn, testified, that he sold the smallest boy, about six years old, to Moses Nichols, who purchased another of one Brush, in the same village.

It further appeared, from the testimony of Stephen Harvey, of the same place, that about three weeks before the trial Nichols purchased a black boy of him, saying, that he would be handy round his house. After this, Nichols came up there and purchased two more.

Phœnix, averring that the prisoner had no testimony, contended to the court that he could not be found guilty under the twenty-ninth section of the act. His offence, if any, came within the provisions of the thirteenth section, which was enacted to prevent sending out of this state slaves and servants.

The public prosecutor had selected the section of the act originally embodied in one act, entitled "An act to prevent kidnapping of free people of colour," which, as it formerly stood, was confined in its provisions to persons "*not being slaves.*" The counsel contended, that though these words were omitted in the twenty-ninth section of the act of 1817, yet the manifest spirit and meaning of that section, compared with the thirteenth section of the same act, was the same as when originally passed.

The act on which the indictment, in this case, is founded, was designed to prevent kidknapping, inveigling, and seizing by force, and without due process of law, persons of colour, *not being slaves or servants;* for the thirteenth section fully embraces the offence of sending such persons out of the state. As this offence is less, the punishment is declared less severe. As James H. Thompson was either the owner of the persons named in the indictment, or had so far the control over them as to render them servants; as there is no evidence, in this case, of a forcible seizing, with an intent to send or carry them out of the state, the counsel strenuously urged to the court, that his offence did not come within the twenty-ninth section.

Jay, after premising that the argument of the opposite counsel admitted the facts, but proceeded entirely on the ground that the indictment was founded on a wrong sec-

tion of the statute, contended that, although the prisoner might have been prosecuted under the thirteenth section of the act, it did not follow that the other section did not embrace the offence with which he was charged. The counsel here adverted to the section of the statute on which the prosecution was founded; and insisted, that, as the words "*not being a slave*" were omitted, the legislature intended thereby to make the act general, and susceptible of comprehending every description of persons of colour whatsoever, whether they were slaves and servants or not. The words of the act were sufficiently extensive to embrace this offence, and the indictment was fully supported by the evidence.

Gardenier compared the thirteenth with the twenty-ninth section of the act, and contended that the first-mentioned section was designed to prevent an offence not contrary to the principles of morality and natural right. This section was founded, merely, on principles of public policy; whereas, the other was designed to prevent offences against the public morals. For this reason, the penalties contained in the twenty-ninth section were much more severe than in the other.

Shall it be said, argued the counsel, that an offence, founded merely on reasons of policy, shall be punished with the same severity as one which is *malum in se*, and contrary to the principles of morality and natural justice? And yet, said, he, we are told that both these sections were designed to embrace the same offence.

His honour the mayor, after adverting to the sections of the act, observed, that as the words "not being a slave" were omitted in the twenty-ninth section, it was difficult to give that construction to the act which had been given by the prisoner's cousel. Should it be in his power, the better course would be to prove that these blacks were all purchased by him: after which, the court would recommend this case to stand for further consideration, should the jury find him guilty on this indictment.

Moses Nichols, a witness on behalf of the prisoner, on being sworn, stated that he had been acquainted with Thompson about five weeks before the trial, who put up at the house of the witness. The prisoner furnished the witness with cash, and was to pay him $20 a piece for the blacks he should purchase. He, the witness, purchased Catherine Daniels of one George Taylor in Poughkeepsie. He bought eight in the whole: two in Albany, five in Poughkeepsie, and one (David Treadwell) of Daniel Abbott in Cherry-street. He purchased all that were on board the Creole, except Ann Freeland.

The witness had been acquainted with Bowen six or seven years, who came from Albany to this city. The witness, on an inquiry by the counsel for the prosecution, whether he told those blacks where they were going, declined answering.

From the testimony of Mingo Smith, a mulatto, it appeared that he was purchased about three weeks ago of Charles Butler in Poughkeepsie, by Nichols. He brought the witness to his house in this city, where there were five other blacks. The night they were carried to the schooner it was very rainy. They were carried away in carriages by Thompson; and Bowen and Crabtree were at the house of Nichols, who was also present. Bowen told him he was to go to Albany for a span of horses.

Gardenier and Phœnix, after urging to the jury the law above stated, contended, that from the facts in the case the jury could not find the prisoner guilty.

Jay summed up the case to the jury, and contended that two out of the four of these blacks were free; and that the prisoner had violated both sections of the act under consideration. His offence comes within the express words of the act on which the indictment is founded. He remarked, in the course of his argument, that there had recently appeared in every civilized country, a universal sentiment of disapprobation against the abominable traffic in human flesh. The good and the great, in every country, had concurred in raising their voices, and exerting their influence in discountenancing a trade fraught with every evil, and repugnant to every principle of natural justice.

After adverting to the conduct of the prisoner, in taking these innocent, unsuspecting persons, and confining them in the hold without avowing his purpose, the counsel concluded by saying, that this was not a case which called for pity from the jury towards the prisoner. True, said the counsel, he is a stranger; so are these forlorn, miserable men, and women, and children.

whom he was about carrying into exile and servitude, remote from their children, their wives and husbands, in a foreign land. It is their situation, and not his, which the jury should regard with sentiments of commiseration.

Maxwell, in an eloquent appeal to the jury, expatiated on the peculiar enormity of the crime of which the prisoner at the bar was guilty. We live, said the counsel, in a country boasting of its civil and religious freedom. Our institutions are purely republican; and the principles of genuine liberty are here cherished. In such a country, and before this tribunal, in the very sanctuary of justice, we are assembled; and we are called upon to extend protection to a forlorn, miserable race of men.

Manstealing is an offence, so atrocious in its nature, so appalling to the feelings, so disgusting to the moral sense of mankind, that language is inadequate to express its turpitude. Its cruelty can hardly be conceived; and, before it, every other species of theft sinks into insignificance. The prisoner at the bar comes among us for this abominable purpose. He selects his instruments; and he ransacks the country, far and near, for his victims. He collects them; and at the dead of night, and in a secret manner, he transports them on board of his vessel, in a remote and solitary part of our city. When detected in his infamous career, what is his conduct? He resorts to subterfuge and lies. He tells the witness that no other persons are on board. This poor, degraded set of men, confined in the vessel, inform their deliverers that other persons are on board. Forlorn, wretched and miserable, they assume the dignity of our nature: they rise in the majesty of innocence, and proclaim their wrongs; while he, trembling and confused, sinks appalled, into the insignificance of conscious guilt. His counsel have not denied his criminality; and it will remain for you, gentlemen of the jury, to provide the most efficacious means for its punishment.

His honour the mayor, in commencing his charge to the jury, remarked, that this was the first instance of a prosecution under this act, since it had passed; and, as it was a novel prosecution, the court was disposed, should the counsel for the prisoner think proper, to hear a further argument on the question of law already submitted.

It is contended, by the counsel for the prisoner, that as he purchased these people of colour, and had control over them, that, therefore, his offence falls within the thirteenth, and not the twenty-ninth section.

Admitting the fact to be true, as alleged, the question would arise, whether the offence of transporting a man's own slave is against the provisions of the last-mentioned section. By the provisions of the former act to prevent kidnapping, the words "*not being a slave*" were inserted, and there was a distinction made between exporting a slave and a freeman: but in the twenty-ninth section of the act of 1817, these words are omitted.

We conclude, and such is the opinion of the court, that the legislature by this omission, intended that this section should embrace all cases of kidnapping, or inveigling, with intent to carry, or send out of this state any person or persons of colour, whether such persons were slaves, or servants, or free. We are, nevertheless, willing to have this opinion reviewed upon more mature deliberation, should the jury from the facts find the prisoner guilty.

Such being the view of the law which the court has taken, the question arises for the determination of the jury, whether the prisoner at the bar did kidnap or inveigle the persons named in the indictment, with intent to send or carry them out of this state. The word kidnapping is defined, the forcible abduction or stealing away of a man, woman, or child from their own country, and sending them into another; and inveigling, in the statute, no doubt, means, the making use of some artifice or fraud to effect the same object.

The facts in this case will warrant the conclusion that if the prisoner did not steal, he, at least, inveigled these persons on board his vessel, with intent to send or carry them out of this state. Here his honour recurred to the principal facts and circumstances in the case, which he stated to the jury; and concluded by charging them that if, from all the facts and circumstances in the case, they believed that the prisoner at the bar either kidnapped or inveigled these blacks on board his vessel, with intent to send or carry them out of this state, it would be the duty of the jury to find him guilty.

The jury found him guilty, and his sentence was suspended.

During this term, on the traverse of the

indictment against Bowen, the same facts, in substance, relating to the release of the blacks from the Creole, were produced, as on the other trial. It further appeared, by the testimony of Joseph Willets, that this vessel had water and provisions on board, calculated for a voyage of considerable length.

Catharine Daniels, one of the women of colour found in the hold of the vessel, on being sworn, stated, that last October she was seventeen years of age, and in the month of June last was purchased by Nichols of a Mr. Paine in Albany, as she was told, for six years, when she would be free. She was brought from Albany to this city in the steam-boat; and Bowen and Thompson came down at the same time. Bowen informed her she was going to the house of Nichols; and afterwards inquired of her whether she was going to Baltimore with Thompson; saying he was a very clever man. When she arrived in this city, she went to the house of Nichols, and Thompson and Bowen were there. Previous to the time she was carried on board of the vessel, she was told, by the two last named, that they were going to carry her *to Baltimore, up the North river*, where she was to live with Thompson. The night she was taken on board with the others, Thompson, when he came near the vessel, told the witness to stay behind a house near the shore, until he should go to the vessel to see who was there. She was put in the hold with others, and was told that she would be kept there but a short time.

Daniel Abbot, on being sworn, testified that he lived in Roosevelt-street, in this city, and sold David Treadwell to Nichols for a span of horses. Bowen was present at the time of the purchase, but the bill of sale was made to Nichols. The witness did not know that Bowen had any concern therein.

In the written examination of Bowen, however, he admitted that he purchased Treadwell in partnership with Nichols.

Maxwell offered David Treadwell as a witness on behalf of the prosecution.

The testimony was objected to, on behalf of the prisoner, on the ground that Treadwell had been proved the slave of Nichols.

Maxwell hereupon offered to read the indictment on which Thompson was convicted during the last term, of aiding, abetting, and assisting Nichols and the prisoner at the bar to carry away out of this state, certain people of colour, among whom Treadwell was one. The counsel contended, that under the thirteenth section of the act, such attempt to export Treadwell, of which the conviction furnished evidence, rendered him free.

The court said, that the thirteenth section, no doubt, intended that the person exporting or attempting to export a slave or servant, should be himself the owner. The fact of the freedom of Treadwell should be proved by circumstances independent of that trial. To admit even the record of this conviction, in the view of the court, would be going too far.

Joseph Curtis, on being sworn, stated that he was on board and examined the Creole, and found nothing in her hold except wood and water. She was registered for twenty tons, and had a jib foresail and mainsail.

James H. Thompson, on being sworn, testified that he went to the house of Nichols on the 15th of June last.

Maxwell produced a number of papers taken from the pocket book of Thompson on his arrest; and the witness, on being examined touching these papers, said that they principally belonged to him, and those which did not, belonged to Crabtree. These papers consisted of divers bills of sale of black persons, and memoranda of moneys advanced by Thompson for the purchase. Among the rest, there was a bill of provisions for the sloop, which were laid in for the voyage; being a much greater quantity than was requisite for a North river coaster. On the margin of an account for divers sums of money paid, was inserted, "*For negroes.*" There were two receipts of $400 each, from Nichols and Bowen. It clearly appeared, from these papers, that Thompson was the principal, and Nichols and Bowen his agents, in procuring these blacks.

From his further examination, it appeared, that the persons taken on board the schooner were willing to go; that at the time he was arrested it was not his intention to go to sea; but that it was his ultimate intention to proceed to Baltimore, in Maryland, in the vessel.

On the question of the admissibility of Treadwell, the court said, that the facts stated by Thompson, in his testimony, clearly showed a step taken in the attempt to export Treadwell out of the state. The court, grounding their decision on the facts stated by Thompson, and on the cir-

cumstances of the case, held that Treadwell became free by this attempt to export him, and was, therefore, a competent witness.

Treadwell on being sworn, stated that he was purchased by Nichols and Bowen jointly, and both claimed him. Bowen was frequently at the house of Nichols, and was present and shut the door of the carriage in which the witness was about being carried to the vessel. The witness was told that he was to be carried up the North river; and when he was carried to the vessel he was put in the hold, and the hatches barred down.

Here the evidence on both sides closed.

Price and Phœnix summed up the case on behalf of the prisoner, and Maxwell on behalf of the prosecution. The grounds of argument, assumed by the prisoner's counsel, were the same as on the trial of Thompson.

His honour the mayor, in his charge to the jury, observed, that the question of law raised by the counsel for the prisoner, did not so distinctly arise as in the case against Thompson. On this trial, some of these people of colour taken on board this vessel appear to be slaves; the others free. As to these, the question raised cannot apply; but, as far as it did, it was the opinion of the court, that the legislature, by omitting the words "*not being a slave*," in the twenty-ninth section of the act, which were contained in the former act, intended to render that section general, and sufficient to embrace all persons of colour whatsoever, whether slaves, servants, or freemen.

There were two questions of fact, for the determination of the Jury, arising from the evidence in this case:

1. Were these persons, found on board this vessel on the 27th of June last, attempted to be exported out of this state? And in determining this question, the jury would inquire into the object with which they were put on board.

2. Did the prisoner at the bar, aid, abet, or assist any other person or persons, in this attempt to export such persons out of this state?

The determination of these questions, depended on all the facts and circumstances of the case combined. His honour here presented the most prominent facts to the view of the jury, and concluded his charge by informing them, that it was not essential in this case that any *force* should have been employed in carrying these people on board. If they were inveigled, or, if any artifice was used to decoy them on board, this was sufficient.

The Jurors found the prisoner guilty.

On the last day of the term, the court sentenced Bowen to pay a fine of $25, and Thompson to imprisonment in the Penitentiary, for the term of three years. The court alleged, as the reason of the difference in the punishment inflicted on the prisoners, that Thompson was a principal, and Bowen but an agent, in the offence of which they had been found guilty.*

The subject of slavery, necessarily connected with the preceding case, is very extensive and important. Confined in our limits, we are constrained to compress the remarks which the nature of the case suggests, into the smallest possible compass.

As far back as history or tradition reaches, slavery, or a state of servitude, has been tolerated in every nation; for, even in the patriarchal age, we are informed by the sacred historian, of property consisting in "man-servants and maid-servants." The state of absolute, unconditional slavery, whether it originated in the right of conquest, or, in the weakness and incapacity of individuals, is no doubt founded in force alone, and derogatory to every principle of natural justice.

For a series of ages, the inhabitants, spread over the extensive peninsula of Africa, have been in a state of the most deplorable ignorance. Without the knowledge of the true God, they were sunk in the grossest idolatry. Divided into a great number of petty tribes or sovereignties, destitute of any political connexion, the country was harassed by perpetual wars and predatory incursions; and the prisoners taken in battle, became the slaves of the conqueror. Such is the melancholy picture, which that wretched country now exhibits.

In the fourteenth century, if we mistake not, the Portuguese commenced the slave trade. And since that time, their example has been followed by most of the other nations, not excepting our own country. Columbus had opened a way to a new world; and the delightful region of the Antilles was colonized by different European nations.

* We understand that Thompson, in the beginning of September, escaped from the Penitentiary.

slaves were wanting to cultivate the soil: rewards were offered; cupidity was aroused; and year after year, ships were stationed along the African coast, procuring loads of slaves, for trinkets and other articles of inconsiderable value. Wars, plunder, rapine and cruelty of every species, were thus fostered and encouraged in this benighted region, by men calling themselves Christians. Thus a race of poor, degraded men, year after year, were torn from their native country, exiled to the islands of the new world, and enslaved. In this country, too, shortly after the earliest settlements, African slaves were introduced and spread throughout its vast extent. In the south they were the most numerous, and their situation there was similar to that of the slaves in the islands.

In a sultry region, under the heat of a tropical sun, these people were subjected to the absolute will and caprice of the planters. Day after day, they were goaded to their tasks, by the lash of a merciless driver: in many islands they were placed out of the protection of the laws, and their condition was, if any, but little superior to the cattle.*

The deplorable condition of servitude to which this helpless race had been reduced, giving a licence to brutal passion on the part of that race who had been instrumental in such servitude, a new cast of men was introduced into every country where slavery predominated. The barrier, which sentiment, habit, and even nature itself had interposed against an amalgamation, was broken down; and an evil, more dreadful in its ultimate effects, on the population of a country, than the sword or pestilence, was introduced. Ages will roll away, but this moral stain cannot be obliterated.

At length a new era arose. Through the exertions and influence of philanthropists, mankind were awakened to the injustice, the cruelty, and the demoralizing effects of the slave trade. Wilberforce raised his voice in the House of Commons, in England, against the inhuman traffic; and other humane individuals in that country, among whom we may mention a Clarkson, a Grenville and a Sharpe, eminently distinguished themselves in the great cause of humanity.

Soon after the American revolution, a few humane individuals in this country, generously came forward to promote the great object. Their efforts have been unceasing; but the principal burden has devolved on a solitary religious society. Principally under its auspices, a general institution has been established, called the "American Convention, for the Abolition of Slavery," at which delegates from the Manumission societies, in different parts of the United States meet at stated times, in Philadelphia. In the year 1787, a society was formed in this city called "The New-York society, for promoting the manumission of slaves, and protecting such of them as may have been liberated;" and in other parts of the Union, especially in Delaware and Pennsylvania, similar institutions are formed.

The grand object of these societies appears to be, the gradual, but ultimate, abolition of slavery in our country. They have made repeated applications to the legislatures of the northern and middle states; and in some of them, laws have been enacted, by which all persons of colour, born after a certain period should be free. In the year 1799, through the influence of the manumission society, an act was passed in our state, that all people of colour, born after the fourth of July in that year should be free. Since that period, for several successive sessions of our legislature, laws have been passed favourable to the emancipation of slaves; and at the last session, an act was passed by which those born of slaves hereafter, should

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* "From Guinea's coast pursue the lessening sail,
And catch the sounds which sadden every gale.
Tell, if thou canst, the sum of sorrows there;
Mark the fix'd gaze, the wild and frenzied glare,
The racks of thought—and freezings of despair!
But pause not then; beyond the western wave,
Go, view the captive barter'd as a slave!
Crush'd till his high heroic spirit bleeds,
And from his nerveless frame indignantly recedes.
Yet here, e'en here, with pleasures long resign'd,
Lo! memory bursts the twilight of the mind;
Her dear delusions sooth his sinking soul,
When the rude scourge assumes its base control;
And o'er futurity's blank page diffuse
The full reflection of her vivid hues.
'Tis but to die, and then to weep no more,
Then will he wake on Congo's distant shore;
Beneath his plaintain's ancient shade renew
The simple transports that with freedom flew;
Catch the cool breeze that musky evening blows,
And quaff the palm's rich nectar as it glows;
The oral tale of elder time rehearse,
And chant the rude, traditionary verse;
With those, the lov'd companions of his youth,
When life was luxury, and friendship truth."
Pleasures of Memory.

continue servants, until the age of twenty-one years and no longer. Those males born of slaves after the year 1799, and before the passing of the late act, remain servants until the age of twenty-eight; and females until the age of twenty-five.

Nor have the efforts of the society been merely confined to the emancipation of these people. In many parts of the union, schools have been established, for the exclusive instruction of people of colour. A school of this description, conducted on the most approved plan, under the direction, and at the expense of this society, has been established in the city of New-York. It consists of two hundred and seventy children, who are taught most of the useful, common, branches of education.

Frequent applications have also been made to congress on this subject; and, though there are conflicting interests between the northern and southern parts of the union, in relation to this subject, much has been done in that body in promoting this great object. In the year 1794, an act was passed, prohibiting carrying on the slave trade, from the United States to any foreign country. In the year 1803, there was an act passed, prohibiting the importation of persons of colour into any state where, by the laws thereof, their admission was prohibited. And, finally, in the year 1807, an act was passed, that after the first day of January, 1808, the importation of slaves, within the jurisdiction of the United States was prohibited, under very heavy penalties.

The importation of slaves into the United States being thus prohibited, and, in many of the states, slavery having been in a measure abolished, and high rewards being offered for slaves in the southern states, the practice of kidnapping was commenced, and has been carried to an alarming height. Fraud, force, and cunning, on the part of the kidnappers, have been successively employed in procuring persons of colour for the southern market, from the middle and northern states. Persons of colour, whether slaves, servants, or freemen, have been forced, stolen, or inveigled, and carried in droves, manacled with fetters, to the southern states. On the lines between the southern and middle states, free people of colour have frequently by stratagem, or force, been dragged away from their relations and friends, carried into a foreign land and made slaves. Many instances have occurred, of these miserable creatures ending their own existence in despair, to avoid the dreadful condition to which they were about to be reduced.

In December, 1816, there was established a society, composed of some of the principal citizens of the middle and southern states, some of whom were slave holders. The society was organized by the name of "The American society, for colonizing the free people of colour of the United States;" and Bushrod Washington was elected the first president. In the debates which took place on the objects of the society, in which the celebrated John Randolph took a part, the condition stated was, that *no interference in relation to the condition of slaves, should be made on the part of the society.*

In the year 1791, a colony of about two hundred whites, and a great number of persons of colour from Nova Scotia, had been established at Sierra Leone, on the western coast of Africa, between 7 and 10 deg. N. latitude, by a company in London. The situation of this colony is represented to be flourishing; the soil is fertile, and adapted to the cultivation of sugar, coffee and most of the other tropical productions. The population is now about 3,000.

The object of the society, last mentioned, was to establish a colony of free people of colour in that country; and during the last session of congress, an able memorial specifying such object was presented. It was referred to a committee; and the two houses came to a joint resolution on the report of the committee, authorizing the president to consult and negociate with all governments, where ministers of the United States are accredited, on the means of effecting an entire abolition of the traffic of slaves: to negociate with Great Britain for receiving into the colony of Sierra Leone, such of the free people of colour of the United States, as shall be voluntarily conveyed there. Should this proposition not be accepted, then to obtain from Great Britain and the other maritime powers, a stipulation, guarantying a permanent neutrality, for any colony of free people of colour, which the United States may hereafter establish on the African coast. It is doubtful what further course will be taken on this subject.

In October last, the synods of New-York and New-Jersey, unanimously resolved, to appoint a board of directors to establish and superintend an African school, for the pur-

pose of educating young men of colour, to be teachers and pastors to people of colour within these states and elsewhere.

From the report made on that occasion, it appears that the ultimate views of the synods, were directed to the period, when a place would be provided, for the colonization of free people of colour, by themselves in this country or abroad.

In our view of the subject, the manumission of slaves in this country, without this grand object of colonization in view, would be worse than useless. By the force of prejudice and inveterate habit, this race of men are considered in a degraded state; and though they may receive the protection of the law, and have equal rights, yet they never can be entitled to the same privileges, rise to an equal grade of moral excellence, and stand on an equal footing with American citizens. There is, and there must be, a distinction. Is it not a common observation, in some measure just, that it would be much better for three fourths of that people who are free, to have good masters? In truth, the greater part of them are voluntary slaves, servants, and waiters. The reason is, they are a poor, degraded, inferior race of men: rendered so by the cruelty and injustice of the whites. Let their industry and enterprise be ever so great, their moral conduct ever so commendable—still they are negroes.

The complicated evils entailed on this country by the introduction of slaves from Africa, could only be remedied, suddenly, by the strong arm of absolute power. If we could suppose a government in this country like that once exercised by Bonaparte, and a decree should be passed to put in requisition every ship in the country, to transport every person of colour to the coast of Africa, under the penalty of death for refusing to go; death to every master for withholding them, and death for introducing any of them ever hereafter, this might suddenly do away the evils which the slave trade has introduced. But while the interests of the southern states are against the abolition of slavery, and while the scale of influence preponderates in favour of those interests, this desirable object is beyond the reach of philanthropy.

Notwithstanding these obstacles to the final accomplishment of this grand object, the friends of humanity, actuated by the most benevolent motives, have done much: let them not despond; they can do much more. The work is laudable: worthy of the benefactors of the human family.

Americans—friends of humanity—legislators—in fine, all ye who hold your fellow men in bondage, attend. The injustice and cruelty of slavery are felt and acknowledged by the great and good of every country. Let not the burden of emancipation rest alone on the shoulders of a single religious society, the members of which are distinguished, alike, for the plainness of their manners, the purity of their moral conduct, and their unbounded benevolence. Unite with them, in the sublime object of mitigating the wrongs and assuaging the sufferings of a poor, untutored, degraded race, whom injustice and cruelty first brought to our shores. Much remains to be done; and what cannot be achieved by your united efforts. Ye profess to be republicans—be so in practice, and let this foul stain of slavery be obliterated. Ye believe it right "To do unto others as ye would that others should do unto you;" and ye do not believe it right that others should hold you in slavery. Let this foul blot be obliterated. Posterity calls on you to remove the evil. The tears and blood of poor, benighted Africa invoke you: let not the appeal be made in vain.

Remember, for the annals of past ages teach us great lessons, that national injustice and cruelty must finally recoil on the head of the posterity of the oppressor. "Blood will have blood." The bondage of the chosen people brought darkness, and plagues, and pestilence over the land of Egypt—the first born were destroyed in a night; and the host of Pharaoh was overwhelmed; while the shepherd of Israel brought forth his flock, with a high hand and an outstretched arm.

The crimes of a Pizzaro and a Cortez, on the helpless, unoffending natives in the sixteenth century, are visited with a tenfold vengeance on the South Americans, in 1817. The foul murders and assassinations, incidental to the civil wars between the Patriots and the Royalists, are the offspring of retributive justice. The ghost of the murdered Montezuma, and his thousands of innocent subjects, must be appeased by blood alone; and the eye of fancy surveys them flitting along the melancholy gloom of those valleys

in which, while clothed with mortal bodies, they were hunted like beasts of prey, but which are now fattened by the loathsome carcasses of their oppressor's offspring.

The tears and blood which have moistened the soil of the Antilles, have, not in vain, called on the Omnipotent for vengeance. Behold the republic of Hayti, rearing her standard over the ruins—the wreck of slavery. The sable sons of Africa have risen in the majesty of independence, and prostrated every vestige of servitude. Tenacious of their rights, they have spurned at every attempt from the mother country to reduce them to subjugation.

Let not such signal examples remain disregarded; but unite your efforts in the great cause of humanity. You will thus expiate the errors and the crimes of past ages: you will atone for that cupidity and cruelty which, during a succession of years, have introduced a helpless, degraded race of men into the bosom of our country. And happily, if through the instrumentality of pious men who shall co-operate, the sublime truths of the Gospel shall be introduced into the benighted regions of Africa, the triumphs of the cross, over Pagan idolatry, will atone for much cruelty, and enroll your names, as the benefactors of the great human family, on an imperishable monument.

(PRACTICE—RULE OF COURT.)

On the application Of ROBERT MACOMB.

GARDENIER, *Counsel for the applicant.*

Where a trial had taken place in the court of oyer and terminer, wherein the clerk of this court was the prosecutor, and the legality of certain charges made by such clerk, in the course of his official duties, and in conformity with the settled practice of the court, was questioned; and also divers cases proved by the defendant, wherein such clerk had received moneys which the rules and practice of the court did not authorize; the court refused a rule or order, prayed for by, and on behalf of such clerk, to appoint a committee, or board of inquiry, consisting of three counsellors of this court, to examine into, and make a report touching the official conduct of such clerk, and the practice of the court in relation to costs.—(See ante, p. 89.)

It seems that such application is extra-judicial, and such report, if made, could not be acted upon, being a nullity.

Gardenier, on the first day of this term, applied to the court on behalf of the clerk, that John Wells, Peter A. Jay, and Robert Bogardus, Esquires, counsellors of this court, be constituted a board of inquiry, or committee, to inquire into the official conduct of the present clerk, and ascertain what the practice of this court had been in relation to costs: and that these gentlemen make a report on the subject, and submit it to the court.

The counsel stated, in support of the application, that since the trial of Coleman, a great degree of public interest had been excited, and much public odium rested on the clerk of this court. Many persons in the community, too, since the trial, harboured a fallacious idea, that the clerk was not entitled to receive any costs; and he was in some measure in doubt, what course to pursue. The great object of the application was, to have the practice of the court, in relation to costs, settled. For these and other reasons, the counsel hoped the court would grant the application.

His honour the mayor said, that in his view, the application was extra-judicial, and such a report, if made, could not be acted upon. The court was not at a loss what course to pursue on the subject of costs, in any case brought before them. The law was well known on that subject, and the practice was settled.

But in the case to which the counsel alluded, other matters were brought to view which the court did not deem it necessary to mention. To grant the application, or receive a report on the subject, would look like an attempt in this court, to meddle with the decisions of the court of oyer and terminer. For these reasons the court refused to interfere, and denied the application.

*** The summary of cases for this term will be found in the following number.